

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EARNEST CASSELL WOODS,
Plaintiff,

v.

THE BOARD OF PRISON HEARINGS,
Defendant.

Case No. [15-cv-05136-JD](#)

ORDER TO SHOW CAUSE

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. Plaintiff has also filed an application to proceed in forma pauperis.

The Prison Litigation Reform Act of 1995 (“PLRA”), provides that a prisoner may not bring a civil action or appeal a civil judgment under 28 U.S.C. § 1915 “if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). The phrase “fails to state a claim on which relief may be granted,” as used in § 1915(g), “parallels the language of Federal Rule of Civil Procedure 12(b)(6).” *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005) (internal quotation marks omitted). A case is “frivolous” within the meaning of § 1915(g) if “it is of little weight or importance: having no basis in law or fact.” *Id.* (internal quotation marks omitted). The court may count as strikes dismissals of district court cases as well as dismissals of appeals. *See Rodriguez v. Cook*, 169 F.3d 1176, 1178 (9th Cir. 1999) (prisoner does not get three frivolous claims and three frivolous appeals before being barred by § 1915(g)). A dismissal under § 1915(g) means that a prisoner cannot proceed with his action as a pauper under § 1915(g), but he

still may pursue his claim if he pays the full filing fee at the outset of the action.


It appears that plaintiff has at least three strikes pursuant to § 1915(g):

- i. *Woods v. Carey*, No. 05-1157 MJJ (N.D. Cal.), dismissed for failure to state a claim.
- ii. *Woods v. Carey*, No. 05-0049 MCE DAD (E.D. Cal.), dismissed for failure to state a claim.
- iii. *Woods v. Curry*, No. 10-1859 JSW (N.D. Cal.), dismissed for improper joinder of unrelated claims against different defendants.
- iv. *Woods v. Curry*, No. 13-16045 (9th Cir.), in forma pauperis denied because appeal was frivolous.
- v. *Woods v. Marshall*, No. 11-8554 UA OP (C.D. Cal.), dismissed for failure to state a claim.

Plaintiff shall show cause within **fourteen (14) days**, why this case should not be deemed three strikes barred and the application to proceed in forma pauperis denied. Failure to reply will result in dismissal.

IT IS SO ORDERED.

Dated: January 7, 2016


 JAMES DONATO
 United States District Judge

United States District Court
 Northern District of California

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CERTIFICATE OF SERVICE

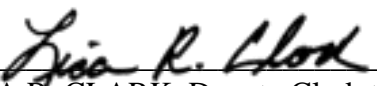
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 7, 2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Earnest Cassell Woods
D58091
P.O. Box 901, A4-233
Imperial, CA 94974

Dated: January 7, 2016

Susan Y. Soong
Clerk, United States District Court

By: 
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO